GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of M/s Syed Habibulla & Company, Forest Contractors, Savaipalya, Shimoga.

Award of the Labour Court, Mangalore published.

Read the following Papers :

(1) Letter No. A/ID-4/72-73, dated 30th October 1972, from Sri B. Hanumanthaiah, Presiding Officer, Labour Court, Mangalore.

IN THE LABOUR COURT AT MANGALORE

Dated 30th October 1972

Reference (ID) (LCM) No. 4 of 1971.

PRESENT :

B. Hanumanthaiah, B.SC., LL.B.,

Presiding Officer

Between :—

Sri Ameerjan,
Sri Sheik Ahamad,
Sri Makbool Ahamad.

Lorry Drivers, Care of N.S.D. Cycle Shop, Lashkar Mohalla, Shimoga. *I Party.*

AND

The Management of Messrs, Syed Habibulla Company, Forest Contractors, Savaipalya, Shimoga.
II Party.

AWARD

The State Government of Mysore being of opinion that an Industrial Dispute exists between the workmen and the management of Messrs. Syed Habibulla & Company, Forest Contractors, Savaipalya, Shimoga, have referred the dispute by their order No. FCL 733 LLD 70, dated 18th January 1971, under Section 10-1(c) of the Industrial Disputes Act 1947, to this Court for adjudication. The points of dispute as specified in the order of reference are the following:

"I. Whether the management of M/s. Syed Habibulla & Company, Forest Contractors, Savaipalya, Shimoga, are justified in terminating the services of the following workmen with effect from the dates mentioned against each

(*a*) Ameerjan .. 14th December 1969.

(*b*) Sheik Ahamed .. 11th March 1970 and

(*c*) Makbool Ahamed .. 17th February 1970.

II. If not, to what relief(s) the workmen are entitled?"

The dispute is registered as Reference (ID) (LCM) No. 4 of 1971.

2. There are 3 workmen. It is stated that the following 3 workmen have been terminated by the management with effect from the dates mentioned against each workmen:

1. Ameerjan .. 14th December 1969.
2. Sheik Ahamad .. 11th March 1970.
3. Makbool Ahamed .. 17th February 1970.

The 3 workmen have filed their claim-statements and they have been received by the Court through post. In their claim petitions, the workmen have claimed overtime wages, compensation for non-providing of Uniform, compensation for the denial of yearly privilege or earned leave, compensation for the denial of Provident Fund benefits, in addition to the claim for reinstatement. The second party has filed 3 counter-statements and they have been received on 6th March 1971. With respect to the claim of the workman Ameer Jan, it is stated that he was not in the service of the second party firm from 1st November 1969 to 14th December 1970 or at any time. It is also denied that his services were terminated on 14th December 1970. It is pleaded that the other items claimed not being covered by the reference, are untenable and cannot be enquired into. With respect to the claim of Sheik Ahamed, it is stated that his claim for the salary from 1st November 1970 to 14th January 1971 is false and untenable. It is denied that he was removed from service either on 14th January 1971 or 11th March 1970. It is pleaded that he absented himself from duty without leave or intimation from 3rd April 1970. With respect to the claim of third member Sri Makbool Ahamad, his claim for arrears of pay is denied. It is denied that his services were terminated by the second party on 17th February 1970. It is pleaded that he absented himself from duty without leave or intimation from 17th February 1970.

3. By his order dated 26th April 1971, my learned predecessor has permitted the first party workmen to file a fresh claim-statement as the separate applications filed by them appeared to be applications under Section 33C(2) of the Industrial Disputes Act. Thereafter, they have filed claim-statement on 27th April 1971. They are represented by their learned counsel Sri B. N. Appanna Hegde, advocate. The second party is also represented by their advocate.

4. In the statement filed on 27th April 1971 it is stated as follows: The first party workman, Ameerjan, was

working as a Driver with one Sri Mohamood Sheriff. from the year 1961, and then, he was taken as a driver in the service of the second party Syed Habibulla Co., after Mohammad Sheriff joined the firm as a partner. During November 1969 a serious accident occurred to Lorry No. MYS 5321 belonging to the company, resulting in the death of his brother who was working as a cleaner, and after observing the mourning period, he went to duty as usual, but he was refused by the management and he has been denied employment. He prays that he may be reinstated in service with full payment of back-wages, or in the alternative, he may be paid compensation and any other relief as the Court may deem fit. It is stated by the second workman, Sheik Ahamed, that he was working as a lorry driver under the second party from May 1965, and later he joined the company of the second party of which Sri Syed Habibulla is the managing partner. It is claimed that he was working as a driver till 11th March 1970, and he was making a request for a rise in his salary, and on 11th March 1970 when he repeated the demand for a rise in salary, he was told that his services were not required. It is stated that in spite of his several requests he was not taken back and no compensation has been paid. Therefore, he claims that his removal from service is not justified and legal. He prays that he may be reinstated in service with full back-wages, or in the alternative, he may be paid compensation along with any other relief as the Court may deem fit. It is stated that the third workman, Makbool Ahmed, was working as a Driver under Syed Habibulla and later under the second party management, from the year 1967 to 17th February 1970. It is pleaded that on 17th February 1970 when he went for work as usual, he was told by the management that his services were not required. That he pleaded with them for the continuance of his service, but he was thrown out of job. He prays that he may be reinstated in service with payment of full back-wages, or in the alternative he may be compensated along with any other relief, that the Court may deem fit.

5. The second party management has filed a further statement on 28th April 1971. It is pleaded that Mohammed Sheriff is not a partner of the second party, and the claim of the workman of the first party against the second party management is ill-conceived and untenable in law. With respect to the claim of the second member, Sheik Ahamed, it is pleaded that he absented himself from duty from 3rd April 1970 without intimation or obtaining leave, at the instigation of one A. R. Khan, and his services have not been terminated by the second party, and therefore, the claim is not maintainable. With respect to the claim of the third member Makbool Ahamed, it is denied that his services were terminated on 17th February 1970. It is pleaded that he remained absent with effect from 17th February 1970 at the instigation of one A. R. Khan. His claim is also denied.

6. On these pleadings the following additional issues have been raised :—

1. Whether Ameerjan was in the service of the second party firm and whether his services were terminated from 14th December 1969 illegally ?

2. Whether Sheik Ahmed, workman under the second party absented himself without leave or intimation from 3rd April 1970 ? If so, what will be its effect on this reference ?

3. Whether Makbool Ahamed, workman under the second party absented himself from duty without leave or intimation from 17th February 1970 ? If so, what will be its effect on this reference ?

4. To what relief, if any, each workman is entitled ?

7. The first additional issue raised in this case is with respect to the claim made by the first party workman

Ameerjan. The second party is a partnership firm. The deed of Partnership had been produced before Court and it is returned, and a copy of the same is marked as Exhibit M.1(a). As embodied in the document, the partners of the firm are (i) Sri Syed Habibulla, (ii) Sri Abdul Gani and (iii) Sri Abdul Wali. It is stated that the partnership has come into existence since 1st April 1966. Sri Syed Habibulla is examined as MW1. He has denied that the workman Ameerjan was in his employment at any time. He has denied that Mohammed Sheriff was a partner in his firm.

8. The workman Ameerjan is examined as MW3. He has stated that Mohammed Sheriff and Syed Habibulla were living in the same House and they are related to each other, and the lorry in which he was working is registered in the name of Mohammed Sheriff, but it is actually used by the second party management. He states that he used to sign in a book, to acknowledge the receipt of pay, and both Sheriff and Habibulla were carrying on the business in consultation with each other and jointly. He has stated that he vehicle Number is MYS 5321, and claims that he was working in the firm till 14th December 1969. W.W. 2 Sri Abdul Zaffar has stated that Mohammed Sheriff, Syed Habibulla and one Abdul Gani were running the business under the name of the second party company. But in his cross-examination he has stated that Ameerjan was working under Mohammed Sheriff, and lorry No. MYS 5321 belongs to Mohammed Sheriff. W.W. 1 Sri A. R. Khan has stated that Ameerjan was working under Mohammed Sheriff and Mohammed Sheriff is also a partner of the firm. That Ameerjan joined the services of the second party after Habibulla and Mohamed Sheriff joined as partners. The oral evidence tendered by the witnesses for the workman is rebutted by the partnership deed produced by the second party management. The Partnership Deed Exhibit M. 1 (a) shows that the partners of the firm are (1) Syed Habibulla, (2) Abdul Gani and (3) Abdul Wali. In his cross-examination M.W. 1 has stated that Mohammed Sheriff is his brother-in-law, and that he has an account with M/s.

S. G. Shivashankaraiah & Sons, Burmah Shell Agents, Bhadravathi. He has stated that Ameerjan might have signed the credit bill Exhibit W. 1., and the lorry was hired by him and petrol is put on his account. He has denied that his brother-in-law Mohammed Sheriff is a partner of the firm. He has admitted that he was putting diesel, and stated that he was putting diesel only because he had hired the lorry for the transport of charcoal. He has denied that at any time he got the lorry repaired. The mere fact that petrol and diesel have been supplied to the lorry on one or two occasions, does not lead to the conclusion that Mohammed Sheriff, was also a partner of the second party firm. No other reliable evidence has been adduced on behalf of the workman Ameerjan to show that Mohammed Sheriff is also a partner of the firm, and the lorry MYS 5321 is owned by the firm of the second party. There is no other reliable material to hold that the workman Ameerjan was an employee under the second party firm. Therefore, I hold that it is not proved that Ameerjan was in the service of the second party firm. Ameerjan has stated that there was an accident and his brother was injured, and therefore, he was unable to attend to work. That he went and reported for duty after 10 days, but the management refused to take him back. He has also made an application praying that Mohammed Sheriff may also be made a party to the proceedings. My learned predecessor has, by his order dated 21st March 1972, found that there is no ground to add Mohammed Sheriff as a party to this Reference. Thus it is found that Mohammed Sheriff is not a partner of the second party firm and the lorry also does not belong to the second party firm. In these circumstances, it cannot be found that the workman Ameerjan went and reported for duty in the second party firm, and the second party has refused employment. I have earlier found that it is not proved that the workman Ameerjan was an employee under the second party management. For these reasons, I find that the workman Ameerjan was not an employee of the second party firm, and his services have not been terminated by the second party firm. This is my finding on additional issue No. 1.

9. It will be convenient to consider additional issues 2 and 3 together. The second member of the first party is Sheik Ahamed, and the third member of the first party is Makbool Ahamed. M.W. 1 Syed Habibulla has admitted that they were his employees. He has stated that Sheik Ahamed left his services on 3rd April 1970 and he did not terminate his services. He has produced Exhibit M. 2 and has stated that on 3rd April 1970 a sum of Rs. 80 was received by the driver as advance, and Sheik Ahmed left the services without notice. Further he has stated that Makbool Ahamed left his services on 17th February 1970 without notice or intimation, and that he had also taken an advance of Rs. 75 on 16th February 1970 as per Ex. M-3. Thus M.W. 1 states that the workmen left their services without notice or intimation, and he has not terminated their services. He has also examined one Munavar Alam to show that the workmen have left their services without intimation to him. M.W. 2 Sri Munavar Alam is also an employee under the second party. He merely states that Sheik Ahamed and Makbool Ahamed, left the services of the second party, and when he had come to Shimoga Sri Habibulla told him that the lorries were standing idle, and asked him to get the drivers. He further states that he went and called them, and they did not come. He has stated that he had stayed at Shimoga only for one day. He has stated that when he went and told the drivers, they did not reply and simply kept quiet. He does not remember the month or the year in which the drivers left their job. The evidence tendered by M.W. 2 is very vague and indefinite. In fact M.W. 1 has stated on 24th September 1971 that he does not remember the name of the person with whom he had sent words to Sheik Ahamed and Makbool Ahamed to come back to duty. He was further examined on 25th April 1972. M.W. 2 was also examined on 25th April 1972. Having regard to the fact that on 24th September 1971 M.W. 1 stated that he does not remember the name of the person with whom he had sent words to Sheik Ahamed and Makbool Ahamed, I find that no reliance can be placed on the evidence tendered by M.W. 2.

10. On behalf of the workmen it is contended that from the circumstnces of the case and from the conduct of the parties, it has to be inferred that it is the management who has refused employment and terminated the services of the workmen and the workmen have not voluntarily left or abandoned the services. The second party firm has not produced any registers to show the attendance of the workmen. It is stated by M.W. 1 that payment register has been maintained, and it is not produced. Exhibit W-4 and W-5 are the notices issued to the workmen Sheik Ahamed and Makbool Ahamed. In these notices it is merely mentioned that they are liable to refund certain amount to the second party firm. In Ex. W-4 it is stated that Makbool Ahamed was working from 12th October 1968 to 16th February 1970. In Ex. W-5 it is stated that Sheik Ahamed was working from 13th July 1968 to 3rd April 1970. It is not mentioned that the drivers have abandoned their job. The second party had also filed civil suits in the court of the Principal Civil Judge, Shimoga. Ex. M-7 is the copy of the order sheet in S.C. No. 44/71. Exhibit M 8 is the copy of the order sheet in S.C. No. 43/71. It is found that the suits have been dismissed. The date of dismissal is 15th April 1971. Ex. M-6 is the letter written by the second party to the Labour Officer. M.W. 1 has stated that he had received notice from Bhadravathi Conciliation Officer on the application of the drivers, that he did not appear before the Conciliation Officer. He has also stated that he did not send his clerk to represent him before the Conciliation Officer. Further, he has stated that he had given instructions to his lawyer to appear before the Conciliation Officer, and he does not know whether his lawyer Sri K. P. Krishna Prabhu appeared before the Conciliation Officer. He has also stated that he did not send any representation in writing to the Labour and Conciliation Officer, Bhadravathi stating the said two drivers namely, Sheik Ahamed and Makbool Ahamed left his services of their own accord and without notice.

11. It is urged that the second party has even refused to receive the copies of the statements sent by the workmen.

W 2 and W 3 are the postal covers said to have been refused by M.W. 1. The two copies of the statements sent in Exhibit W. 3 are also available in the file. They are of course not marked as Exhibits. It is urged that the second party has all along exhibited a defiant attitude and from its conduct it must be found that it has refused employment to the workers.

12. The learned representative for the second party urged that the claim made by the workmen in the statements filed by them earlier, before Court, and in the statement filed on 27th April 1971, are at a variance and the evidence tendered by the workmen before court is not inconsistent with the facts stated in the statements filed earlier, before court and therefore, they are not reliable witnesses. It is true that in the statements filed earlier before Court, the workers have made several claims, *viz.*, unpaid salary, overtime wages, compensation for not providing uniform, compensation for denial of yearly privilege or earned leave, compensation for the denial of provident fund benefits in addition to the claim for reinstatement. My learned prodecessor has by his order dated 26th April 1971 has permitted the workmen to file separate claim-statements on the ground that the earlier applications filed by them are applications under Section 33C(2) of the Industrial Disputes Act. The question referred for adjudication was whether the management was justified in terminating the services of the workmen with effect from the dates mentioned against each. I have also read the statements filed by the parties earlier. They are typed copies. It is not clear on whose instructions they were drafted. The learned representative for the second party has also not questioned the workmen to explain the descrepancy. In these circumstances, I find that the evidence tendered by the workmen before Court, cannot be examined with reference to the earlier statements or applications filed by them claiming several benefits. Hence, I find that it cannot be found that the evidence tendered by the workmen is unreliable, because they have claimed several benefits in the applications filed by them before Court.

M.W. 1 has stated that Sheik Ahmed left his services on 3rd April 1970 and he had taken Rs. 80 on 3rd April 1970 as advance as per Ex. M. 2 dated 3rd April 1970. Further he has stated that Makbool Ahmed left the services on 17th February 1970. He also states that Makbool Ahmed had also taken an advance of Rs. 75 on 16th February 1970 as per Ex. M-3 dated 16th February 1970. The vouchers Exhibits M. 2 and M. 3 show that advances have been paid. Exhibits M. 4 and M. 5 are two other vouchers. Further, it is stated by M.W. 1 that he cannot definitely say whether Rs. 75 paid under Exhibit M. 5 represents salary as well as D.A., because the writer used to make payments to them. He also stated that one A. R. Khan was a Gumastha under him. A. R. Khan is examined as W.W. 1. He has stated that the workmen Sheik Ahmed and Makbool Ahmed demanded higher salary and the management did not accept the demand, but directed them to go away if they were not willing to continue under the existing pay. It is contended by the learned representative for the second party that the evidence tendered by W.W. 1 is not reliable because there were complaints against him when he was working in the Esso Company. He i.e., W.W. 1 has stated that he was the office manager under the second party for 4 years, and he left the services in the month of April 1970. It is suggested that there was a complaint that certain account books are lost when he was working under the second party management. But no material is placed to show that any account books are lost. It is true he has stated that while working under the Esso Company he was getting a basic pay of Rs. 450 per month, and the second party was paying Rs. 200 only per month. There is no allegation that W.W. 1 was not working properly. It is merely suggested that the drivers have left their job at the instigation of A. R. Khan. But no satisfactory evidence is produced to show that it is A. R. Khan who instigated the workers to leave their job. But it is clear that payments were being made to the workers after obtaining vouchers. In fact M.W. 1 has stated in his examination-in-chief that he has maintained payment register, but he has not brought

it before Court. He has produced only two vouchers. The vouchers do not bear any printed serial number. It is also the case of the second party that the payment was being made in advance, and it was being adjusted out of the salary due to the workers. From exhibits W. 4 and W. 5 it appears to me that it is sought to be made out by the second party management that every time payment was being made only as advance and it is sought to be adjusted only after the parties left the job. If in fact advance has been received by the worker Makbool Ahmed on 16th February 1970, it is clear that he was anxious to work under the second party. Thus the circumstances of the case only go to show that the workmen Sheik Ahmed and Makbool Ahmed were ready and willing to work under the second party at all times. W.W. 4 Sheik Ahmed has stated that he never stated that he would not do duty, if the second party did not agree to pay a higher salary. He merely states that they were demanding a higher rate of pay. It is true that he has not stated the particular date on which they have made the demand. He has stated that they were agitating for a higher rate of pay since about a month earlier to the date of refusal of work, and they continued to work under the same pay. Thus the conduct of the parties show that the workers Sheik Ahmed and Makbool Ahmed have not voluntarily left the service of the second party.

13. The workers have raised a dispute before the Conciliation Officer, and this is also a circumstance which shows that the workers have not left the services voluntarily. W.W. 2 Sri Abdul Zabbar has stated that he was a driver under the second party and that they had demanded for a higher salary and the second party did not accept the same, and they were forced to leave the job. He has also stated that he made an application to the Conciliation Officer, and the dispute had been settled. In fact he has admitted that Ameerjan was working under Mohammed Sheriff in lorry No. MYS 5321 belonging to Mohammed Sheriff. Therefore, I find that W.W. 2 is a reliable witness, and believe his evidence. From his evidence, it is clear that the management

has refused to provide work to the drivers since they were demanding for a higher pay. For all the reasons stated above, I find that the workers Sheik Ahmed and Makbool Ahmed have been refused work and the second party has terminated their services. It is not true that the workmen have voluntarily left the services under the second party.

14. In the reference it is stated that the service of the workman Sheik Ahmed is terminated with effect from 11th March 1970, but the management has stated that he has remained absent from 3rd April 1970. The workman has no documentary evidence to show on what date he was refused employment. Though in the claim-statement, he had stated that he was working till 11th March 1970, Exhibit W. 2 shows that payment has been made to Sheik Ahmed on 3rd April 1970. Therefore. I find that it can be found that the termination of service of Sheik Ahmed is with effect from 3rd April 1970. For the reasons stated above, I answer issue Nos. 2 and 3 as follows: It is not proved by the management that Sheik Ahmed absented himself from duty from 3rd April 1970. It is not proved by the management that Makbool Ahmed absented himself from duty with effect from 17th February 1970. The management has refused to take them on duty from the abovesaid dates, and has terminated the services of Sheik Ahmed with effect from 3rd April 1970 and the services of Makbool Ahmed with effect from 17th February 1970.

15. The next question for consideration is to what relief are the workers Sheik Ahmed and Makbool Ahmed entitled. I have now found that the second party management has terminated their services and the said termination is without any just cause. Therefore, they are entitled to be reinstated in the services under the second party management.

16. The services of Sheik Ahmed has been terminated with effect from 3rd April 1970 and the services of Makbool Ahmed, with effect from 17th February 1970. The workers

have claimed backwages also. Sheik Ahmed W.W. 4 has stated that he is running a taxi MYS 1503 and working there temporarily. He has stated in his examination-in-chief that he has no regular employment, but he works casually whenever he gets an opportunity. He has not stated what is the salary that he is now getting, and what was the amount he was earning after 3rd April 1970. Since the worker has not stated what is the damage that he has suffered, I find that he is not entitled to any backwages.

17. W.W. 5 has also stated that he has no regular employment and he works casually whenever he gets an opportunity. In his cross-examination he has stated that he is working in a volcanising shop and he is paid Rs. 3 per day. When he was working under the second party he was getting a pay of Rs. 100 per month. He has sworn that he gets only Rs. 3 per day now. Assuming that he would get Rs. 3 per day, for 26 working days he would be getting only Rs. 78. Therefore, I find that it is reasonable to allow him 20 per cent of the backwages, from the date of termination of service till the date or reinstatement.

18. I have earlier found that the first party first workman Ameerjan is not a worker under the second party. Therefore, he is not entitled to any relief in this case.

19. In the result, I pass the following award :

AWARD

It is not true that Ameerjan was an employee under the second party, and therefore, he is not entitled to any relief. The termination of services of Sheik Ahmed the first party second workman, and Makbool Ahmed, the first party third workman, is not justified and they are entitled to be reinstated in service, with continuity of service. They shall be reinstated in service by the second party within two months

from the date of publication of this Award, by the State Government in the Official gazette. The first party third workman Makbool Ahmed shall also be paid 20 per cent of his pay towards backwages from 17th February 1970 till the date of reinstatement. The first party workman Ameerjan shall bear his own costs. The second party shall pay a cost of Rs. 50 (Rupees fifty only) to each of the two workmen Sheik Ahmed and Makbool Ahmed in these proceedings.

B. HANUMANTHAIAH,

Mangalore.
30th October 1972.

Presiding Officer,
Labour Court, Mangalore.

ORDER

Bangalore dated the 25th November 1972.

S.O. 47.—WHEREAS by State Government Order No. FCL 733 LLD 70, dated 18th January 1971, the Industrial Dispute between the Workmen and the Management of M/s. Syed Habibulla & Company, Forest Contractors, Savaipalya, Shimoga was referred to the Labour Court, Mangalore for adjudication.

AND, WHEREAS the Labour Court, Mangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 225 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,

Under Secretary to Government,
Food, Civil Supplies and Labour Department.